

**ARIZONA COURT OF APPEALS
DIVISION ONE**

BARBARA LAWALL, in her official
capacity as Pima County Attorney,

Appellant,

vs.

R.R. ROBERTSON, LLC, an Arizona
limited liability company, doing
business as R3 Investigations;
RICHARD R. ROBERTSON; and
CHRISTOPHER DUPONT,

Appellees.

No. 1 CA-CV 14-0367

Maricopa County Superior Court
Case No. CV2013-016013

**APPELLEE CHRISTOPHER DUPONT'S ANSWER
BRIEF**

CHRISTOPHER DUPONT

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I. INTRODUCTION

¶1 This case presented a straightforward legal question: whether the public records requests made to appellant, Barbara LaWall, in her official capacity as the Pima County Attorney, and the Pima County Attorney's Office (hereinafter "PCAO"), by appellees were for a "commercial purpose," as defined by the Arizona Public Records Law, A.R.S. § 39-121, et seq. (the "Public Records Law"). The litigants did not dispute whether appellees were entitled to the requested documents, merely whether appellees requested the documents for a commercial use, and thus must (1) make certain disclosures so that PCAO can determine the commercial value of the requested records and, (2) bear a greater cost of their production.

¶2 The trial court resolved the question in an equally straightforward manner and in keeping with both the canons of statutory interpretation and the perceived purpose of the Public Records Law. Granting appellees' motion for summary judgment, the trial court held that "it does not appear that that the defendants are seeking the records for a commercial purpose as the term is used in the statute," even setting aside the available "evidence exception" -- which excludes from the definition of commercial purpose the use of a public record as evidence or research for evidence. When the trial court also took into account the evidence exception, it

found that the provision added “further weight to [appellee’s] argument.” The law supports this reasoned determination.

¶3 PCAO’s position -- that appellee’s must bear a heightened cost of the public records requests because they are for a commercial purpose – has no legal or evidentiary merit and finds no legal support within Arizona Public Records Law jurisprudence. For the reasons set forth herein, no genuine issue of material fact existed and the trial court correctly granted appellees summary judgment. This court should affirm the trial court’s grant of appellees’ motion for summary judgment and denial of appellant’s cross-appeal for summary judgment.

II. STATEMENT OF THE CASE AND FACTS

A. Christopher Dupont’s Request

¶4 Appellee Dupont is a criminal defense attorney, licensed to practice in Arizona since October 1992; he has represented defendants in first-degree murder cases for the last 19 years, and capital defendants for the last 14 years. (ROA 29, Exhibit 1). In addition, Dupont provides consultation services to capital defense teams throughout the country, and represents a client with interests in numerous capital cases in almost every death penalty state in the U.S. (*Id.*).

¶5 Dupont has been retained to conduct a study of first-degree murder cases in both Pima and Maricopa Counties, and manages a team of professionals to collect and analyze data related to these cases. (*Id.*). In connection with this study, Dupont

arranged for R3 Investigations, co-appellee in this matter, to make a public records request related to felony charging and sentencing in Pima County, Arizona. (*Id.*) R3 requested a “copy of selected portion of [PCAO’s] ‘register’ . . . of all criminal cases prosecuted by [PCAO] that were initiated in calendar years 2002 through current.” (ROA 15, ¶17). R3 avowed that it sought the records for a “non-commercial purpose,” as defined by A.R.S. § 39-121.03(D). (*Id.* at ¶18). PCAO responded in writing and noted its disagreement with R3’s contention that the request was for a non-commercial purpose. (*Id.* at ¶ 19). Specifically, PCAO asserted that the evidence exception did not apply to R3’s request because

[we] believe this exception to the commercial purpose definition applies only to a specific, pending case or proceeding and does not allow a person or entity to obtain records to sell, in whole or in part, to litigants in an undetermined number of future judicial proceedings. Moreover, we do not believe the use of prosecution records in plea and sentencing assessment qualifies as “evidence” or “research for evidence.”

(*Id.*). Through counsel, R3 replied that PCAO’s legal positions were “unsupported.” (*Id.* at ¶20). PCAO responded by filing a declaratory judgment action against R3. (ROA 1).

¶6 Five days after PCAO initiated the declaratory judgment action, R3 sent a second records request seeking charging and sentencing data for all first-degree murders, as defined in A.R.S. § 13-1105. (ROA 15, ¶22). R3 specified that it made the request “to conduct research on behalf of counsel for a client, the results of

which will be used as evidence before a judicial body.” (*Id.*). PCAO responded via letter, stating its belief that the second request was also for a commercial purpose. (*Id.* at ¶23).

¶7 In light of PCAO’s refusal to provide the requested documents and initiation of the declaratory judgment action, Dupont submitted his own public-records request to PCAO, seeking the same records R3 had requested pertaining to the first-degree murder data. (ROA 29, Exhibit 3). In his records request to PCAO, Dupont affirmed that the request was “made to conduct research on behalf of a particular client, the results of which may be used as evidence before a judicial body and/or other public forum.” (*Id.*). PCAO failed to provide the requested public records, instead insisting that Dupont provide additional information regarding the intended use of the records and justification for their production. (ROA 29, Exhibit 4). Dupont declined to disclose the requested information based on the fundamental doctrines of attorney-client privilege and work product. (ROA 29, Exhibit 5). Upon being denied the requested information, PCAO sought and obtained leave of the Court to amend its Complaint against R3 and added Dupont as a party to the declaratory action. (ROA 18, 20, 21).

B. The Motions and Ruling Below

¶8 R3, joined by Dupont, moved for summary judgment because the records were not sought for a commercial purpose. (ROA 17, 27). PCAO opposed the

motion for summary judgment and cross-moved for summary judgment based on its contention that R3 and Dupont made the records requests for a commercial purpose. (ROA 32). Eventually, after Dupont avowed that he did not intend to provide the records he requested to R3, PCAO withdrew its cross-motion as to Dupont. (ROA 45, at 3-4; ROA 49).

¶9 After holding oral arguments on R3 and Dupont's jointly filed motion for summary judgment, and PCAO's cross-motion as to R3, the trial court granted judgment in favor of R3 and Dupont, and denied PCAO's cross-motion. (ROA 52, 53). Upon the court's ruling in its favor, R3 sought attorneys fees and the trial court granted the request in its entirety. The trial court entered Final Judgment in favor of R3 and Dupont on May 2, 2014. (ROA 60, 63). PCAO filed a notice of appeal that same day. (ROA 64).

¶10 PCAO presents this court with two issues for review, but only the second pertains to Dupont: “[U]se of a public record as evidence or as research for evidence in an action in any judicial or quasi-judicial body’ is not a commercial purpose. The public-records requests at issue in this case do not relate to a specific legal action, and R3 intends to use the records requested to prepare reports for its customers; those customers, in turn, may not use the reports as evidence in an action, but rather may use them in any manner they see fit. Did the trial court err in concluding that the Evidence Exception supports R3's and Dupont's arguments?”

III. ARGUMENT

A. Dupont Did Not Seek Public Records for a “Commercial Use”

¶11 Dupont utilizes a variety of data, information, and analyses to achieve favorable sentencing outcomes for his clients; public records requests are one method through which he gathers pertinent information to assist his clients. The simple fact that Dupont receives compensation for his time, effort, and expertise does not in any way cause his records requests to be “for a commercial purpose.” The definition of “commercial purpose” contained within the Arizona Public Records Law cannot fairly be read to include Dupont’s manner of use of the requested records – to assist in the production of a systemic process study for litigation and evidentiary purposes. The trial court correctly determined that “it does not appear that defendants are seeking the records for a commercial purpose as that term is used in the statute, even setting aside the final sentence of Subsection D.” Thus, Dupont was entitled to summary judgment and the trial court did not err by finding in his favor.

1. Defining Commercial Purpose

¶12 The Arizona Public Records Law defines “commercial purpose” as:

The use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and address from public records for the purpose of solicitation or the sale of names and addresses to another for the propose of solicitation or for any purpose in which the

purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record.

A.R.S. §39-121.03(D). As the trial court correctly noted, case law on this provision is sparse. However, available case law definitively establishes that the section is “aimed at the direct exploitation of public records not at the use of information gathered from public records in one’s trade or business.” *Star Publishing Co. v. Parks*, 178 Ariz. 604, 605 (App. 1994). *Star Publishing* specifically rejected PCAO’s position, holding that “[l]earning facts from public records that might inform one in a daily occupation or might be newsworthy would not be a commercial purpose.” *Id.* To hold otherwise would be “inconsistent with the whole tenor of the public records statutes to make access freely available so that public criticism of governmental activity may be fostered.” *Id.*

¶13 *Primary Consultants LLC v. Maricopa County Recorder*, 210 Ariz. 393 (App. 2005) solidified the holding in *Star Publishing*, finding that the statutory definition of commercial purpose does not include a for-profit business’s uses of data gleaned from a public records request in furtherance of its business. *Id.* at 400 (“[S]tatus as a for-profit business and [] use of voter information in furtherance of that business . . . does not fall within the statutory definition of commercial purpose.”). In reaching this determination, the *Primary Consultants* court broke down the definition of “commercial use” into “three sections having parallel construction: the use of a public record for certain purposes, the obtaining of

names and addresses from public records for a particular purpose, and the sale of names and addresses to another for certain purposes. The ‘purposes’ listed within these sections further describe when the use of, the obtaining of, and the sale of the public records information is deemed commercial use.” *Id.*

2. The Trial Court Correctly Determined That Dupont’s Use of the Requested Records is Not for a Commercial Purpose

¶14 On appeal, PCAO fails to maintain that Dupont made the records request for a commercial purpose. PCAO raises two issues before this Court, but only mentions Dupont in the second issue, relating to the proper application of the “evidence exception” contained within A.R.S. §39-121.03(D). It is PCAO’s first issue, directed exclusively at R3, which contends that the subject records requests qualify as “for a commercial purpose” under “the use” clause. PCAO does not assert that Dupont’s use of the records falls within any of the three parallel sections described in *Primary Consultants*: the use clause, the obtaining clause, or the sale clause. To ever apply the evidence exception to Dupont, PCAO would first need to establish that Dupont requested the records for one of the three commercial purpose scenarios. Dupont requested the documents for no such purpose, and PCAO has failed to demonstrate otherwise.

¶15 No factual dispute exists between PCAO and Dupont regarding the intended purpose of Dupont’s records request. PCAO asserted in its supplemental statement of facts, and Dupont did not dispute, that he sought the data in order to have it

analyzed for a client who has retained him to “conduct a study of First-Degree Murder cases in Pima and Maricopa Counties.” (ROA 30 at 6; ROA 45 at 2). As Dupont has steadfastly maintained, the list or data itself has no intrinsic intellectual or commercial value to him; the trial court clearly agreed. The list’s only value is the added value of conducting systemic process studies for litigation – i.e. the value of an analyst’s time and skill in conducting that analysis. Dupont did not request the documents to use them for sale or resale or for the purpose of producing a document containing all or part of the copy; he is not engaging in the “direct exploitation” of the public records. See *Star Publishing, supra*, 178 Ariz. at 605. Rather, Dupont, his associates, his agents and his clients intend to analyze and integrate the requested data into an empirical study and comparison of first-degree murder cases. This is far from approaching the direct sale or reproduction for sale of the documents that the commercial purpose definition of A.R.S. §39-121.03(D) contemplates. Instead, it is precisely the type of non-commercial use of the data addressed by *Primary Consultants* – the gleaning of data and information from a public record in furtherance of one’s professional endeavors. See *Primary Consultants*, 201 Ariz. at 400. This attenuated relationship between the requested documents and Dupont’s intended final product underscores the inapplicability of the commercial purpose definition in this case.

B. Even if Dupont’s Request Qualifies as a “Commercial Purpose,” the Trial Court Correctly Determined that the “Evidence Exception” Applies

¶16 Assuming arguendo that this Court finds Dupont’s request somehow falls within one of the three clauses of the “commercial purpose” definition, A.R.S. § 39-121.03(D)’s evidence exception applies. Contrary to PCAO’s assertion, no pending legal action is necessary in order to seek the exemption of a public record request from the commercial purpose category via the evidence exception. PCAO’s contrary assertion lacks any legal basis and the trial court, in fact, found such a proposition “disingenuous.” (ROA 53 at 3, n. 2). Furthermore, historical charging data has a variety of critical evidentiary uses, and PCAO’s concern over the admissibility of such data is not only unnecessary, it is categorically misplaced.

1. The Evidence Exception Does Not Require Any Specific and/or Pending Legal Action

¶17 PCAO’s contention that the evidence exception applies only when the public records are sought for a specific, pending case conflicts with both the plain language and spirit of the Public Records Law. The last line of A.R.S. § 39-121.03(D) states that “[c]ommercial purpose does not mean the use of a public record as evidence or as research for evidence in an action [.]” Inserting “pending” prior to “action,” as PCAO suggests doing, would require this Court to ignore the most fundamental canon of statutory construction to which Arizona courts ascribe – “[W]here the language [of a statute] is plain and unambiguous, courts generally

must follow the text as written.” *Canon Sch. Dist. No. 50 v. W.E.S. Constr. Co.*, 177 Ariz. 562, 529 (1994).

¶18 The plain language of the Public Records Statute does not limit the evidence exception to either a “specific” or a “pending” action. Had the legislature intended to so limit the evidence exception, as PCAO contends, it “would have expressly done so.” *Estate of Braden ex rel. Gabaldon v. State*, 228 Ariz. 323, 327 (2011). The fact that the term “pending action” appears over 40 times in the Arizona Revised Statutes makes it abundantly clear that the Arizona legislature knows precisely how to use the term when intended or necessary to avoid confusion under the statute’s circumstances. *See, e.g.* A.R.S. § 6-126; A.R.S. § 6-395.05; A.R.S. § 6-460; A.R.S. § 6-464; A.R.S. § 12-341.01; A.R.S. § 12-1511; A.R.S. § 13-2314.04; A.R.S. § 23-1023; A.R.S. § 25-381.18; A.R.S. § 46-455. In fact, the legislature has utilized both “action” and “pending action” within the same sentence on various occasions, further underscoring its ability to clarify and differentiate between the two terms when necessary or useful. *See* A.R.S. § 3-368.

¶19 PCAO emphasizes the fact that the Arizona Legislature has used the phrase “an action” “in a context that most logically suggests (or even requires) that it be interpreted to refer only to a pending action.” (Brief of Appellant, 22). This, however, does not establish that A.R.S. §39-121.03(D) is one of those scenarios. Indeed, all of the examples PCAO provides regarding the use of “an action” to

mean a specific and pending action contextually require such a reading to reflect the plain and logical meaning of the statute. The majority of the examples PCAO provides refer to behaviors of parties or the court – which necessarily require that an action be ongoing. For example, A.R.S. § 20-487.04(B) permits the state director of insurance to “maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for the recovery of compensatory damages or other appropriate relief [.]” This clause contemplates either the initiation of an action if one is not currently pending, or the intervention in an already pending action. Intervention is not logically possible if there is no pending action in which to intervene. Nor is the raising of a counterclaim without pending claims to counter; *see* A.R.S. § 33-1365, which provides that “in an action for rent where the tenant is not in possession, the tenant may counterclaim as provided [above.]” Other examples listed by PCAO reference “parties”, “measure of damages”, “appointment of conservator,” “the court”, “venue,” and “writ of mandamus,” all of which necessarily require an ongoing action, or the active involvement or oversight of the courts. *See* A.R.S. §§ 10-1814, 11-454, 19-122, 20-487.04, 20-487.04, 22-261, 25-809, 38.262, 47-2723. In contrast, an attorney may logically pursue the development of or research for evidence without a specific and pending action; the production of large-scale charging and sentencing

analyses can and will be useful to an attorney in many cases, whether already initiated or not.

2. A.R.S. §39-121.03(D) Does not Require the Disclosure of the Proceeding for Which Dupont Sought the Records Nor How the Records Will Lead to Admissible Evidence

¶20 PCAO’s inquiries regarding the “nature and current status of the proceeding” for which Dupont sought the public records in question and how the records “will be used in the proceeding, including specifically how [Dupont] contend[s] it will lead to admissible evidence,” create a fictional legal threshold to the application of the evidence exception under A.R.S. § 39-121.03(D). Such queries not only violate Appellee’s right to investigate public officers without interference but also directly affront the work product doctrine.

¶21 The U.S. Supreme Court in *Hickman v. Taylor*, 329 U.S. 495 (1947) explained that attorneys and their staff must be able to work “with a certain degree of privacy, and free from unnecessary intrusion by opposing parties and counsel.” *Id.* at 510. Thus, “justice is best served by thorough preparation of a client’s case,” which “demands that an attorney investigate, compile factual information, plan strategy, and formulate legal theories without interference from the opposing party.” *State ex rel. Corbin v. Ybarra*, 161 Ariz. 188, 192 (1989). This doctrine has been codified throughout all federal and state jurisdictions.

¶22 In Arizona, the work product doctrine protects two distinct types of information from discovery. *See* Ariz. R. Civ. Pro. 26(b)(3). The first protected category includes documents prepared by counsel or counsel’s agents in anticipation of litigation, while the second category relates to documents containing “mental impressions, conclusions, opinions or legal theories” of attorneys and their agents. Furthermore, the Arizona Rules of Criminal Procedure clearly state that “[d]isclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent they contain the opinions, theories or conclusions . . . of defense counsel or defense counsel’s legal or investigative staff.” Ariz. R. Crim. Pro. 15.4(b)(1).

¶23 PCAO’s attempt to pierce the work product privilege before providing the public records to which Dupont is legally entitled is entirely unsupported. PCAO may not require the disclosure of such information merely because Dupont is in an investigative rather than active litigation stage at this time. Furthermore, nowhere does the statute require public records requestors to disclose the exact nature of their project, planned use of the information acquired, or how they intend to achieve admissibility, if so required, down the road.

3. The Evidence Exception Does not Contain an Admissibility Threshold

¶24 PCAO’s argument that the word “evidence,” as contained within the evidence exception, refers to evidence that is admissible before a judicial or quasi-

judicial body has no support from even a single authority. While Dupont appreciates PCAO's concern for how he might achieve admissibility of the data contained within the requested records, the preoccupation with its admissibility is misplaced and legally unsubstantiated.

¶25 Nowhere in the definition of evidence is the word "admissible," and imaginarily inserting such a requirement runs counter to the purpose of the statute as the trial court aptly noted. *See* ROA 53 at 3 ("construing the word 'evidence' broadly, rather than cabining it to something admissible under the Rules of Evidence, fosters the purpose of the statute (to make public records broadly available)"). In determining what the legislature meant by "evidence" or "research for evidence," courts must apply the term's "plain meaning," which may be "glean[ed]" from a dictionary. *State ex rel. Winkelman v. Ariz. Navigable Stream Adjudication Comm'n*, 224 Ariz. 230, 240-241 (Ct. App. 2010). The term "evidence" is most commonly understood as "[s]omething (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact." Black's Law Dictionary, 576 (7th ed. 1999). However, evidence may also be "the collective mass of things, esp. testimony and exhibits, presented before a tribunal in a given dispute." *Id.* *See also* Evidence Definition, Merriam-Webster.com <http://www.merriam-webster.com/dictionary/evidence> (last visit August 5, 2014) (defining the term as "something which shows that something else

exists or is true”). The fact that the evidence exception specifically mentions “evidence *or* research for evidence” further underscores that the admissibility standard suggested by PCAO does not exist in these circumstances and is absolutely untenable.

4. Historical Charging and Sentencing Data Has Numerous and Critical Evidentiary Uses

¶26 Even if potential admissibility in a judicial or quasi-judicial body were somehow the standard, a review of historical charging and sentencing data is admissible under a variety of scenarios. Despite various assertions to the contrary, PCAO, as head of a prosecuting agency, is well aware of the common practice in courts throughout Arizona to negotiate plea agreements and to participate in settlement conferences pursuant to rule 17.4 of the Arizona Rules of Criminal Procedure. Parties also commonly submit formal memoranda in preparation for settlement conferences, supported by the type of sentencing analyses prepared by R3 or the empirical study Dupont is currently conducting.

¶27 Moreover, an analysis of the type of data requested would be undeniably admissible and considered by a fact finder during criminal sentencing proceedings. The law requires courts to consider mitigating circumstances that might support an application of mitigated ranges as set forth in Arizona’s sentencing statutes. A.R.S. § 13-701(E); *see also* A.R.S. § 13-702(A) (“Any reduction or increase shall be based on the aggravating and mitigating circumstances listed in section 13-701,

subsections D and E . . .”). Courts may consider in mitigation any factor relevant to the particular circumstances of a defendant’s character or nature of his case, pursuant to A.R.S. § 13-701(E)(6). In death penalty cases, the consideration of any and all mitigating evidence is even more compelling and well documented. *See State v. Tucker*, 215 Ariz. 298, 322 (2007), *citing State v. Ellison*, 213 Ariz. 116, 144 (2006) (“Any relevant mitigation evidence that supports a sentence less than death is admissible . . . there need not be a causal nexus between the mitigation evidence and the crime.”). *See also Tennard v. Dretke*, 542 U.S. 274, 287 (2004) (rejecting notion that defendant must establish a nexus between mitigating evidence and his crime).

¶28 Trial courts throughout the country may (some even must) consider historical charging and sentencing data in their allocation of appropriate and proportional sentences, and appellate courts can consider and may find compelling the demonstration of a gross disproportionality between a defendant’s sentence and those of similarly situated defendants or sentencing disparities amongst particular groups of defendants. *See, e.g., State v. O’Brien*, No. CR2003-016197 (Ariz. Sup. Ct. Maricopa County 2004); 18 U.S.C. § 3553(a)(6) (federal courts shall consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct”); Mont. Code. Ann. § 46-18-310 (requires comparative proportionality review in Montana capital cases);

Wash. Rev. Code § 10.95.10 (requires comparative proportionality review in Washington capital cases). *See also* Hon. Stephen A. Gerst, *Comparative Proportionality Analysis: Its Feasibility and Usefulness in Sentencing*, 1 Phoenix L. Rev. 59 (2008) (chronicling the use of historical charging and sentencing data as evidence to be considered by sentencing judges).

¶29 The issue of proportionality and sentencing disparities is particularly critical in capital cases, where the defendant faces a maximum punishment of death. Many of this country's leading death penalty cases relied on statistical analyses of first-degree murder cases from particular jurisdictions. *See, e.g., Furman v. Georgia*, 408 U.S. 238 (1972); *McCleskey v. Kemp*, 481 U.S. 279 (1987). In *Furman*, the U.S. Supreme Court looked to and cited a variety of reports and statistics relating to the unequal application of the death penalty, including those that examined a particular geographic area or specifically addressed the role of race. Justice Douglass, in his concurrence, cited the President's Comm'n on Law Enforcement and Administration of Justice, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 143 (1967); Koeninger, *Capital Punishment in Texas, 1924-1968*, 15 *Crime & Delin.* 132, 141 (1969); H. Bedau, *THE DEATH PENALTY IN AMERICA*, 474 (1967 rev. ed.); and Johnson, *The Negro and Crime*, 217 *Annals* 93 (1941). *See Furman*, 408 U.S. at 249-255. While Justice Marshall, in his concurrence, cited dozens of reports, articles, and studies on the effectiveness of the death penalty, as well as statistics

related to race and the death penalty, referring to the them as “the massive amounts of *evidence* before us [.]” *Furman*, 408 U.S. at 354 (Marshall, J. concurring) (emphasis added). *See also id.* at 364-365, n. 149-152.

¶30 The data requested from PCAO and any analytical report derived therefrom is equally as admissible as the statistics and reports to which the U.S. Supreme Court cited in *Furman*. For years attorneys have presented to courts powerful studies and reports relating to race and disparity in charging and sentencing. *See, e.g.,* David Baldus, et al., *Empirical Studies of Race and Geographic Discrimination in the Administration of the Death Penalty: A Primer on the Key Methodological Issues*, in *THE FUTURE OF AMERICA’S DEATH PENALTY: AN AGENDA FOR THE NEXT GENERATION OF CAPITAL PUNISHMENT RESEARCH* (Charles S. Lanier, et al., eds., 2009); Michael G. Urbina, *CAPITAL PUNISHMENT AND LATINO OFFENDERS: RACIAL AND ETHNIC DIFFERENCES IN DEATH SENTENCES* (2011); David Baldus, et al., *Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience*, 74 *J. Crim. L. & Criminology* 661 (1983). Courts, in turn, have cited to and relied upon such studies and reports. *See, e.g. Walker v. Georgia*, 555 U.S. 979, 981 (2008), *citing* Baldus & Woodworth, *Race Discrimination and the Legitimacy of Capital Punishment: Reflections on the Interaction of Fact and Perception*, 53 *DePaul. L. Rev.* 1411 (2004); *Ring v. Arizona*, 536 U.S. 584, 617 (2002), *citing* Baldus, Woodworth, Zuckerman,

Weiner, & Broffitt, *Racial Discrimination and the Death Penalty in the Post-Furman Era: An Empirical and Legal Overview, With Recent Findings from Philadelphia*, 83 Cornell L. Rev. 1638 (1998); *Harris v. Pulley*, 885 F.2d 1354, 1374 (9th Cir. 1989) (examined a statistical study proffered by defendant/petitioner relating to the imposition of the death penalty and race in California); *State v. Salazar*, 173 Ariz. 399, 418 (1992) (Feldman, C.J., concurring), citing David C. Baldus, et al., *Arbitrariness and Discrimination in the Administration of the Death Penalty: A Challenge to State Supreme Courts*, 15 Stetson L. Rev. 133 (1986).

¶31 The charging and sentencing analyses Dupont seeks to develop are precisely the sort of evidence both trial level and appellate courts alike would find useful and are permitted to be considered in criminal cases. PCAO's suggestion otherwise amounts to willful blindness of the variety of information and evidence courts can and will take into account, and are often mandated to consider.

IV. CONCLUSION

¶32 The trial court did not err in resolving the straightforward legal question this case presented. At no time did a genuine issue of material fact exist, and the trial court's resolution in Dupont's favor is in keeping with both Arizona jurisprudence and the tenor of the Arizona Public Records Law. No court could find otherwise, and thus this Court must affirm the decision of the Maricopa County Superior Court that Dupont's use of the requested records is not for a commercial purpose.

V. JOINDER IN APPELLEE ROBERTSON'S ANSWER BRIEF

¶33 Appellee Robertson, in his Answer Brief, extensively addressed the substantive issues in this appeal. It is therefore the intention of this Joinder to adopt the facts and law as set forth by Appellee Robertson in his Answer Brief.

RESPECTFULLY SUBMITTED August 19, 2014.

By:

/s/ Christopher B. Dupont

Christopher B. Dupont

Attorney for Appellee